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August 5, 2002

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, CY-B402
Washington, DC 20554

RE: WC Docket No. 02-150: Application by BellSouth Telecommunications, Inc. for Authorization to provide In-Region InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

Dear Ms. Dortch:

The Public Service Commission of South Carolina ("South Carolina Commission") replies to certain comments of WorldCom, Inc. filed with the Federal Communications Commission ("Commission") on July 11, 2002, concerning BellSouth Telecommunications, Inc.'s ("BellSouth's") application to provide in-region interLATA services in South Carolina.

(1) WorldCom, in its comments dated July 11, 2002, questions whether BellSouth has an enforceable performance plan in South Carolina. The South Carolina Commission asserts that BellSouth's performance plan, known in South Carolina as the "Incentive Payment Plan ("IPP"), is an enforceable performance plan similar to the enforcement mechanisms previously found acceptable by the Commission in granting other 271 cases.

The South Carolina Commission, in its Order No. 2002-77 (February 14, 2002) and its Order No. 2002-396 (May 28, 2002), clearly acknowledged that the IPP is designed to meet the Commission's standards for penalty plans and is designed to prevent any "backsliding" by BellSouth in the level of service it offers to its competitors after BellSouth enters the long-distance market. Further, the South Carolina Commission noted that neither the 1996 Act nor any Commission rule required an enforcement mechanism, such as a penalty plan. Given the fact that neither the 1996 Act nor a Commission rule, legally requires BellSouth to include an enforcement mechanism, the South Carolina Commission recognized that the enforcement plan would be a voluntary enforcement mechanism. Notwithstanding the fact that the IPP is a voluntary enforcement plan, the

South Carolina Commission ordered BellSouth to include the IPP in BellSouth's SGAT to ensure that BellSouth will have a legally binding obligation to pay penalties under the IPP. However, as the IPP is a voluntary enforcement mechanism, the South Carolina Commission recognized that BellSouth maintains the ability to modify the IPP upon approval by the South Carolina Commission, and conversely to consent to any changes or revisions proposed by the South Carolina Commission. The mere fact that the South Carolina Commission acknowledges that BellSouth maintains the right to modify the IPP subject to approval of the South Carolina Commission or that BellSouth has the right to consent to revisions to the IPP proposed by the South Carolina Commission, does not render the IPP unenforceable. Further, the IPP, as approved and modified by the South Carolina Commission, is self-effectuating, and contrary to WorldCom's comments, enforcement of performance failures under the IPP will not require litigation.

Also with regard to the IPP, WorldCom asserts that the South Carolina Commission has previously determined that it lacks jurisdiction to impose penalties or fines in the context of an arbitrated agreement. In support of its contention, WorldCom cites to a 1999 arbitration order. See "Order on Arbitration," Order No. 1999-690 (October 4, 1999), Docket No. 1999-259-C, In Re: Petition of ITC^DeltaCom Communications, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996. However, WorldCom's citation is taken out-of-context. WorldCom fails to include the finding of the South Carolina Commission that "neither the 1996 Act nor state law allows the [South Carolina] Commission to impose penalties or fines in this arbitration." Order No. 1999-690 at 12. Further, WorldCom neglects to cite to the next paragraph of Order No. 1999-690 where the South Carolina Commission stated "with respect to ITC^DeltaCom's ... statement concerning so called 'anti-backsliding measures' that this matter is more appropriate for consideration under the public interest standard under Section 271 of the 1996 Act than an arbitration for an interconnection agreement." *Id.* Thus in its Order No. 1999-690, the South Carolina Commission acknowledged that no law required the South Carolina Commission to impose fines or penalties and that such fines or penalties as a deterrent to back-sliding would be more appropriate in the context of a Section 271 proceeding than in an arbitration proceeding. The South Carolina Commission then declined, in Order No. 1999-690, to order an enforcement mechanism or penalty plan in the context of a single arbitration agreement involving only the parties to that arbitration agreement. Instead, and within the context of BellSouth's 271 proceeding, the South Carolina Commission evaluated BellSouth's proposed enforcement mechanism, made modifications to BellSouth's proposal, approved the enforcement mechanism as modified, and ordered the modified enforcement mechanism effective upon BellSouth receiving section 271 approval from the FCC. Thus, the South Carolina Commission maintains that BellSouth's IPP is enforceable upon BellSouth receiving section 271 approval from the Commission and that the South Carolina Commission has jurisdiction over the IPP.

(2) WorldCom's comments allege that the South Carolina Commission accepted inappropriate ex parte communications during the 271 proceeding and further allege that a Legislative Committee was established to evaluate ex parte communications at the Commission. WorldCom Comments at 22. WorldCom's comments are factually

incorrect. During the screening process for the re-election of commissioners, a complaint was lodged with the Committee to Review Candidates for the South Carolina Public Service Commission (hereafter “Committee to Review Candidates for SCPSC”), established to screen candidates for positions to the South Carolina Commission, concerning a possible ex parte communication from the section 271 proceeding. Contrary to WorldCom’s assertions, no “special” legislative committee was established to evaluate ex parte communications. Further, while the Committee to Review Candidates for SCPSC expressed concern over the “lack[] of any enforceable prohibition against inappropriate ex parte communications,” the Committee to Review Candidates for SCPSC did not cite any particular commissioner for illegal ex parte communications. In fact, the Committee to Review Candidates for SCPSC found all incumbent commissioners qualified for service on the South Carolina Commission. WorldCom attempts to present its opinion of the South Carolina screening process, replete with the politics involved in the selection of commissioners, as fact, and in so doing incorrectly states the facts. While the Committee to Review Candidates for SCPSC has recommended long-term changes to the South Carolina General Assembly regarding the structure of the South Carolina Commission, no final determination on those recommendations has been made. And the fact remains that neither the Committee to Review Candidates for SCPSC, nor any other committee or fact-finding body, has made a determination that any communications between BellSouth and the South Carolina Commission were violative of state law.

WorldCom also alleges impropriety on behalf of the South Carolina Commission by the South Carolina Commission directing the staff to meet with BellSouth to discuss and develop a new change control metric. WorldCom asserts that the South Carolina Commission’s directive is in violation of ex parte rules. By South Carolina Commission Order No. 2002-396 (May 28, 2002), the South Carolina Commission considered a request from BellSouth to reconsider the decision of the South Carolina Commission to make the newly ordered Change Control Process metric a Tier 1 penalty under the IPP as opposed to a Tier 2 penalty. See, South Carolina Commission Order No. 2002-77 at 27, 70, and 119 (February 14, 2002) (where the South Carolina Commission required BellSouth to develop a measurement assessing BellSouth’s responsiveness to CLEC-initiated change requests under the Change Control Process and to include a payment category under Tier 1 for that metric). WorldCom asserts impropriety by the South Carolina Commission for instructing the staff to enter into discussions with BellSouth on this matter without including CLEC participation in the discussions. As noted in Order No. 2002-77, a metric assessing BellSouth’s responsiveness to CLEC-initiated changes submitted to the Change Control Process is not required for section 271 approval. Order No. 2002-77 at 70. However, the Commission, upon concerns from CLECs raised during the 271 proceeding, directed BellSouth to develop a metric measuring BellSouth’s responsiveness under the Change Control process. Subsequently the South Carolina Commission clarified its directive to require the staff and BellSouth to develop a proposal on whether the Change Control Process metric required by Order No. 2002-77 should be a Tier 1 or Tier 2 metric. The South Carolina Commission further clarified its directive to provide that once the proposal for the metric is filed with the South Carolina Commission, then all parties to the docket will be noticed and afforded a period in which

to file comments on the proposal. The South Carolina Commission recognizes that CLECs and other parties to the 271 proceeding in South Carolina may desire to comment on any proposal affecting BellSouth's measurements under the 271 case. Further, the Commission recognizes that BellSouth's provisioning of service under section 271 is an on-going process where the South Carolina Commission may be called upon from time to time confront issues concerning BellSouth's provisioning of services in South Carolina. However, in order to address issues as they arise, the Commission must have an issue before it. In directing staff and BellSouth to enter discusses and develop a proposal on the Change Control Process metric as either a Tier 1 or Tier 2 penalty, the South Carolina Commission is merely getting a proposal before it. Thus, WorldCom's assertion that the South Carolina Commission has directed its staff and BellSouth to engage in ex parte communications is wrong because WorldCom and other CLECs will have an opportunity to comment on any proposal concerning this metric before the South Carolina Commission finalizes its decision on this metric.

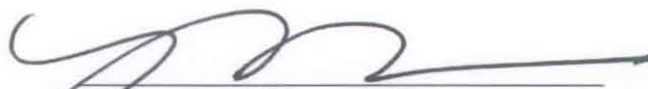

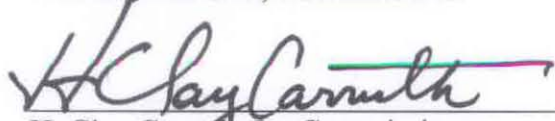
(3) By letter dated August 1, 2002, WorldCom, apparently in response to discussions with the Commission's staff, addresses certain pricing issues related to BellSouth's daily usage files ("DUF") charges and BellSouth's deaveraged UNE rates in South Carolina. WorldCom raised the issues concerning BellSouth DUF charges and pricing for deaveraged rates in its July 11, 2002, Comments. See, WorldCom's Comments (July 11, 2002) at 12-14. The South Carolina Commission issued its order on UNE pricing on November 30, 2001. See, "Order on UNE Rates," Order No. 2001-1089 (November 30, 2001), Docket No. 2001-65-C, In Re: Generic Proceeding to Establish Prices for BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Services. WorldCom participated in the UNE proceeding in South Carolina and now asks the Commission to find that the methodology approved by the South Carolina Commission for deaveraged UNE rates into cost zones is contrary to FCC rules. The South Carolina Commission reviewed BellSouth's deaveraged methodology closely and determined that BellSouth's proposed methodology was consistent with FCC rules for deaveraging. Neither WorldCom nor any other party to the UNE Pricing docket filed an appeal challenging the DUF charges or the pricing of the deaveraged rates established by the South Carolina Commission in Order No. 2001-1089. The South Carolina Commission is of the opinion that had WorldCom had a legitimate challenge to the rates established by South Carolina Commission Order No. 2001-1089 that WorldCom's proper recourse would have been to appeal Order No. 2001-1089.

Further, the South Carolina Commission would note that the United States Department of Justice ("DOJ") filed its evaluation of BellSouth's 271 application on July 30, 2002. The DOJ does not address any pricing concerns regarding the UNE prices established in South Carolina. In other 271 proceedings before the Commission, the DOJ has not hesitated in raising pricing issues to the Commission where the DOJ's evaluation warranted such issues being raised. See, e.g., Evaluation of the U.S. Department of Justice, *In re: Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri*, FCC CC Docket No. 01-88 (May 9, 2001); Evaluation of the U.S. Department of Justice, *In re:*

Application of Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (D/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in New Jersey, FCC CC Docket No. 01-347 (January 28, 2001); and Evaluation of the United States Department of Justice, In Re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, FCC CC Docket No. 00-217 (December 4, 2000). Thus, it appears to the South Carolina Commission that the DOJ does not share WorldCom's concern with the pricing issues raised by WorldCom.

Therefore, based upon the foregoing comments, the South Carolina Commission urges the FCC to reject the issues raised by WorldCom in its comments and to find that BellSouth has met the legal requirements under section 271 so that BellSouth may provide in-region interLATA services within South Carolina. Contrary to WorldCom's assertions, the South Carolina Commission has a long history of supporting the continuing development of telephone competition in South Carolina and in bringing more choices and lower prices to consumers in South Carolina. The South Carolina Commission supports BellSouth's 271 application and looks forward to BellSouth being granted 271 authority in South Carolina so that South Carolina consumers can reap the true benefits of competition.

Sincerely,


Mignon L. Clyburn, Chair
Randy Mitchell, Vice Chairman
William Saunders, Commissioner
James Blake Atkins, Ph.D., Commissioner
H. Clay Carruth, Jr., Commissioner
C. Robert Moseley, Commissioner